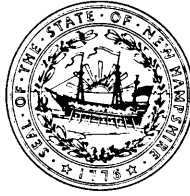


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February 4, 1988

Mr. Maurice L. Daneault
Assistant Executive Secretary
N.H. Retirement System
169 Manchester Street, Bldg. 3
Concord, New Hampshire 03301

Dear Mr. Daneault:

By letter dated December 22, 1987, you have inquired whether the Board of Trustees is authorized to classify the position of Boating Education Officer as a group II position. Based upon the information provided, it is our opinion that the Board is not authorized to do so.

In February, 1987, the department of safety hired John MacDonald to fill the position of Boating Education Officer. Mr. MacDonald had previously been employed as a liquor investigator, and was a group II member of the Retirement System. Prior to February, 1987, the position of Boating Education Officer had been vacant for a considerable period of time. When last occupied, the position had been classified as part of group I in the Retirement System. Although a request appears to have been made during the 1970's to reclassify the position from group I to group II, the employee who held that position was promoted while the request was pending, and the Board of Trustees thereafter took no action upon the request.

Group II members of the Retirement System consist of permanent policemen and permanent firemen. RSA 100-A:1, X(b). "Permanent policeman" is defined in part as any person who as a job requirement has satisfied minimum standards as determined by



the police standards and training council for physical condition, education and training and is certified as a police officer as defined in RSA 188-F:23, and who is regularly employed on full-time duty by the department of safety. RSA 100-A:1, VII (Supp. 1987).¹ That statute further provides that in all cases of doubt, the Board of Trustees, by a vote of 2/3 of the members present, shall determine whether any person is a permanent policeman as so defined. Id. The Board's authority to reclassify a position from group I to group II, however, was severely limited by legislation effective July 24, 1987. As of that date, no position shall be reclassified from group I to group II "without legislation specifically authorizing a transfer from group I to group II." RSA 100-A:3, IX (Supp. 1987).

It appears that prior to 1985, the definition of "police officer" did not include employees responsible for enforcement of the boating laws of this State. See RSA 105-A:2, I (repealed). In 1985, however, the legislature amended the definition of "police officer" to include employees responsible for enforcement of state boating laws. See RSA 188-F:23, I (Supp. 1987); Laws 1985, 307:2 (effective October 1, 1985). Although the job description for Boating Education Officer does not include any police duties, the department of safety has informed you that sometime in 1986 or 1987 the department decided to require that the Boating Education Officer be certified as a police officer and assigned police duties to that position.

You have informed us that the Board of Trustees has never formally reclassified the Boating Education Officer position from group I to group II. Based upon the information provided by the department of safety, however, it appears that the Boating Education Officer position may meet the definition of "permanent policeman" in RSA 100-A:1, VII. The Board no longer has the authority, however, to reclassify any position from group I to group II absent specific authorization from the legislature. See RSA 100-A:3, IX (Supp. 1987). The issue to be

¹Prior to July 24, 1987, "permanent policeman" was defined in part as any person certified as a police officer as defined in RSA 105-A:2 and who is regularly employed on full-time duty by a police department or police force of the State. See Laws 1981, 536:3. RSA 105-A:2, which defined "police officer," was repealed and replaced by RSA 188-F:23 effective July 1, 1985. See Laws 1985, ch. 152.

decided is whether the amendment of the definition of "police officer" to include employees who enforce boating laws should be construed as specific authority to reclassify the Boating Education Officer from group I to group II, or should be construed as itself reclassifying that position from group I to group II.

In amending the definition of "police officer" in 1985 to include employees who enforce boating laws, the legislature did not specifically refer to or otherwise authorize the reclassification of the Boating Education Officer position from group I to group II. Nor does it appear that the Boating Education Officer position would have met the definition of "permanent policeman" at that time, as the position was vacant and its job specifications did not include any police duties such as enforcing boating laws. Thus, in order for that position to be reclassified as group II, it was necessary for the Board of Trustees to take some action. The Board has not taken any such action, and now is without authority to do so. Accordingly, it is now necessary to seek specific legislative authorization in order to reclassify the Boating Education Officer position as group II.

This conclusion is consistent with the past practice of the Board of Trustees when the definition of "police officer" has been expanded. In 1985, certain employees who enforce liquor laws were added to the definition of "police officer." See RSA 188-F:23, I (Supp. 1987); Laws 1985, 326:1. Those employees were not reclassified from group I to group II, however, until a request was made to the Board of Trustees. At the Board's meeting on August 12, 1986, the board voted to approve the transfer effective January 1, 1987. See Minutes of the 231st Regular Meeting of the Board of Trustees at 1-3 (August 12, 1986). Clearly, if the amendment of the definition of "police officer" alone were sufficient to reclassify certain group I positions as group II, then the reclassification in this case would have been effective upon the effective date of the 1985 amendment. See also Minutes of the 237st Regular Meeting of the Board of Trustees at 2-3 (February 10, 1987) (correctional line personnel enrolled in group II "with no retroactivity").

Finally, we believe this result is consistent with the legislature's clear purpose in enacting RSA 100-A:3, IX of exercising legislative control over the growth of group II. We conclude that the Board is not authorized to reclassify the Boating Education Officer position from group I to group II

absent additional legislation specifically authorizing that transfer.

Very truly yours,

A handwritten signature in dark ink, reading "David S. Peck". The signature is written in a cursive style with a prominent initial "D".

David S. Peck
Assistant Attorney General
Civil Bureau

DSP:ab
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